

DEPARTMENT OF STATE REVENUE

01-20221509.LOF
01-20221510.LOF**Letter of Findings: 01-20221509; 0120221510
Indiana Individual Income Tax
For the Years 2019 and 2020**

NOTICE: [IC 6-8.1-3-3.5](#) and [IC 4-22-7-7](#) require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual, a professional athlete, protested the Indiana Department of Revenue's ("Department") proposed assessments of additional Indiana individual income tax for the years 2019 and 2020. For the year 2019, individual provided insufficient documentation regarding his duty days as a professional athlete, however he was able to provide sufficient documentation regarding the year 2020.

ISSUE**I. Individual Income Tax - Proposed Assessments.**

Authority: [IC 6-3-2-2](#); [IC 6-3-2-2.7](#); [IC 6-8.1-5-1](#); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Express Scripts Inc. v. Indiana Dep't of State Revenue*, 170 N.E.3d 273 (Ind. Tax Court 2021); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Income Tax Information Bulletin #88 (January 1, 2018); Income Tax Information Bulletin #88 (December 2019).

Taxpayer protests the proposed assessment of additional Indiana state income tax and local income tax for the years 2019 and 2020.

STATEMENT OF FACTS

The Department issued notices of proposed assessment for additional Indiana state income taxes and local income taxes relating to the years 2019 and 2020. Taxpayer filed a Protest Submission Form ("Form") protesting the Department's proposed assessments. On the form Taxpayer checked the box indicating that he wanted a "Final determination without a hearing," which states that in forgoing the hearing that Taxpayer "asks the Department to make its decision based on the written protest and documentation (if any) the taxpayer presents along with the protest" and that the Taxpayer "waives the right to a hearing." Additional facts will be provided as necessary below.

I. Individual Income Tax - Proposed Assessments.**DISCUSSION**

The Department, in a letter dated December 31, 2021, stated that a "review of your Indiana Individual Income tax for the tax period ending December 31, 2019, indicates you owe an additional \$945.31. This amount represents the full liability due including all assessed penalties and interest to date." The Department's letter also states that regarding Taxpayer's federal income the Department made an adjustment "to match the sum of your Indiana column on Schedule A." The Department's "Schedule A" form for the IT-40 PNR is for the entering of the same income or loss reported on one's federal income tax return. The Department's letter further states:

We adjusted your Schedule A Indiana Line 1B to match Indiana income reported on the primary customer's W-2s.

We adjusted Schedule D's proration percentage to match the calculation on Schedule A Line 21D.

No CT-40 was attached, so we filled it out based on the information included with the return.

For clarification, Schedule D involves exemptions and a CT-40 PNR is a "County Tax Schedule for Part-Year and Full-Year Nonresidents."

Turning to 2020, the Department mailed out a letter on March 22, 2022, stating the Department had reviewed Taxpayer's tax return and "identified inconsistencies during processing which has resulted in changes to your filing." The letter, in a similar fashion as the one relating to 2019, then noted the adjustments and issues involving Schedule A, Schedule D, and the CT-40.

Taxpayer is a professional athlete. In his protest letter, dated May 9, 2022, he states that the Department is "proposing to tax the entire W-2 earnings . . . for the 2019 and 2020 taxation years." Taxpayer states that he played professionally in 2019 for an Indiana team but also a team located in another state (it should be noted that the other state does not have a reciprocity agreement with Indiana). For 2020, Taxpayer states that he only played for the team located outside of Indiana and "spent no days in Indiana in 2020." The Department notes that the two minor league teams that Taxpayer played for are affiliated with the same major league team. Taxpayer then states that only \$16,851 was earned in Indiana in 2019 and that no income "was earned in 2020 in Indiana."

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in [IC 6-8.1-5-1\(c\)](#), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "when [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

[IC 6-3-2-2](#) deals with "adjusted gross income derived from sources within Indiana" for nonresident persons. Regarding professional athletes, [IC 6-3-2-2.7](#) specifically deals with team members and Indiana income, defining such things as "Indiana duty days," "team," "team members," among other things. The Department additionally has, for the general public's assistance, published a nontechnical bulletin regarding taxation of nonresident professional athlete team members, namely, Income Tax Information Bulletin #88.

For instance, the January 1, 2018, version of Information Bulletin #88 (January 1, 2018), [0180131-IR-045180052NRA](#), states in relevant part that "[n]onresident athletes playing or on contract with a team will apportion their income to Indiana based on duty days performed in Indiana compared to total duty days in a taxable year." That same version of the Information Bulletin states that it applies to "employees who are active players, players on a disabled list, and other individuals required to travel with and perform services on behalf of the team on a regular basis." Regarding partial year team members, that Information Bulletin states:

Total duty days for an individual joining a team during the season begin on the day the individual joins the team and, for an individual who leaves a team, end on the day the individual leaves the team. When an individual changes teams during a taxable year, a separate duty day calculation must be made for the period the individual was with each team. Total duty days do not include days for which a team member is not compensated and is not rendering a service for the team in any manner, including days when the team member has been suspended without pay and prohibited from performing any services for the team.

Regarding total duty days, that "means all days during the taxable year that a team member renders a service for the team, beginning with the team's official preseason training period through the last game in which the team competes or is scheduled to compete. The term includes duty days on which a team member renders a service for the team on a date that does not fall within this period." *Id.* (See also Income Information Bulletin #88 (December 2019), [20200401-IR-045200160NRA](#)).

Taxpayer's protest in relevant part consisted of the protest letter and a 2019 "State Wage Allocation Schedule" with two columns relating to "Total U.S. Wages," "Total 'Duty Days' in Indiana," "Total 'Duty Days' in 2019," and "Indiana Source Wages." Taxpayer also included a printout of his Wikipedia page and provided a printout of the Indiana professional team's 2018-2019 schedule. Taxpayer also provided a letter from the payroll director of the major league team.

Regarding the year 2020, the information provided establishes that Taxpayer did not play in Indiana. For example, the letter from the payroll director states in relevant part, "During calendar year 2020 and 2021, [Taxpayer] was employed as a professional [athlete] by [the major league team]" in a state other than Indiana. Thus, on the issue of 2020, Taxpayer is sustained.

However, after review of Taxpayer's documentation, Taxpayer has failed to meet his burden of proof for the year 2019. A taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. The Indiana Tax Court has noted that poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). A taxpayer, when submitting evidence as part of the taxpayer's protest, needs to specify and explain the portions of the evidence that taxpayer believes to be relevant. As the Indiana Tax Court has previously noted (in the context of a summary judgment motion): "the Court will not consider" exhibits "on the off chance that it might find, on its own and undirected, some fact that supports" a claim, and "the Court is not required to search for specific facts on which" a party relies. *Express Scripts Inc. v. Indiana Dep't of State Revenue*, 170 N.E.3d 273, 279 (Ind. Tax Court 2021).

In the present case, for the year 2019 Taxpayer merely asserts "it was determined that the taxpayer spent 70 days out of 188 days in Indiana in 2019" without any primary supporting documentation, such as official letters from the teams establishing his Indiana duty days. [IC 6-3-2-2.7\(2\)](#) defines Indiana duty days as, in part, "the number of total duty days spent by a team member within Indiana rendering a service for the team in any manner" with exceptions for "travel days spent in Indiana that do not involve either a game, practice, team meeting, promotional caravan, or other similar team event" and time spent in Indiana but on the disabled list. Taxpayer would also need to provide documentation for each Indiana county that he had an Indiana duty day, and he would also need to establish his total duty days for 2019. As noted, Taxpayer has failed to meet his burden of proof provided in [IC 6-8.1-5-1](#) and *Scopelite*, *Wendt LLP*, and *Express Scripts*.

FINDING

Taxpayer's protest is partially sustained and partially denied. Taxpayer is sustained regarding 2020; Taxpayer is denied regarding 2019.

May 9, 2023

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An [html](#) version of this document.